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Crl.O.P.No.14533 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 25.04.2024**

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

**Crl.O.P.No.14533 of 2023**  
**in Crl.A.SR.No.30046 of 2023**

M.Ramesh

... Petitioner/Appellant

Vs.

Selvaraj

... Respondent/Respondent

**Prayer in Crl.O.P.No.14533 of 2023** : Criminal Original Petition filed u/s.378(4) of the Code of Criminal Procedure, seeking to grant special leave and permit the petitioner to prosecute the above appeal filed against the order of acquittal dated 28.04.2023 made in S.T.C.No.234 of 2019 on the file of the learned Judicial Magistrate/FTC No.II, Erode.

**Prayer in Crl.A.SR.No.30046 of 2023** : Criminal Appeal filed under Section 378 of the Code of Criminal Procedure Code, to set aside the order of acquittal dated 28.04.2023 made in S.T.C.No.234 of 2019 on the file of the learned Judicial Magistrate/FTC No.II, Erode by allowing this Criminal Appeal.

For Petitioner : Mrs.Yogalakshmi Sridhar  
for M/s.M.Guruprasad

For Respondent : Mr.D.Ragu

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### **ORDER**

This Criminal Original Petition has been filed seeking to grant special leave to the petitioner to file an appeal against the impugned



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judgment passed by the learned Judicial Magistrate/FTC No.II, Erode in S.T.C.No.234 of 2019 dated 28.04.2023.

2. It is averred that the respondent/accused is a known person to the petitioner/complainant. On 21.01.2019, the respondent had borrowed a sum of Rs.15,00,000/- from the petitioner as a hand loan and he has agreed to repay the same within a period of one month from the date of borrowable. In order to discharge the above stated loan amount, the respondent had issued a cheque bearing No.000123 dated 21.02.2019 drawn on Lakshmi Vilas Bank, Brough Road, Erode Branch. As per the instructions of the respondent, the petitioner presented the said cheque for collection on 22.02.2019 through Axis Bank Limited, Erode Branch. However, the said cheque was returned dishonoured due to insufficiency of funds with an endorsement as "Payment Stopped by the Drawer" on 25.02.2019 and the same was intimated to the petitioner on 26.02.2019. Thereafter, the petitioner sent a registered notice to the accused on 05.03.2019 both to his office and his residential address, intimating the dishonour of cheque and calling upon him to repay the aforesaid due under the said cheque. Inspite the service of notice addressed to his office



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on 08.03.2019, the respondent has not come forward to repay the said amount. Knowing the contents of the same, the accused managed to return the notice sent to his residence and the same was returned with an endorsement as "Door Locked Intimation given" on 13.03.2019. Therefore, left with no other alternative, a complaint was filed by the petitioner as against the respondent for an offence u/s 138 r/w Section 142 of the Negotiable Instruments Act (in short 'the N.I. Act') before the trial court in S.T.C.No.234 of 2019. While so, after trial, the Court below had dismissed the said complaint filed by the petitioner by acquitting the respondent. Aggrieved over the same, the petitioner preferred the present petition seeking to grant special leave to prefer an appeal against the said judgment dated 28.04.2023 in S.T.C.No.234 of 2019.

3. The learned counsel appearing for the petitioner submitted that the signature in the alleged cheque was admitted by the respondent, who is the legal custodian of the cheque, whereas the Court below has failed to consider the facts of the case in a proper manner. He further submits that the petitioner will be put to much hardship, if the leave sought for is not granted. Hence, he prays for appropriate orders.



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4. The learned counsel appearing for the respondent submitted that, by considering all the materials available on record, the court below has passed the impugned judgment, which is wholly sustainable and the same does not require any interference. Accordingly, he prays for dismissal of this petition.

5. This Court perused the entire materials placed on record and the impugned judgment passed by the Court below.

6. It is the consistent ratio laid down that grant of leave is not a matter of right; rather it is the edifice on which the liberty of the person, who has been accused of a crime rests and where a person, who had been accused of a crime had been acquitted by the court below, a presumption follows the golden rule that a person is presumed innocent until proven guilty and on that basis the second presumption on the basis of the acquittal necessitates the appellate court to scrutinize the materials more carefully. Further, grant of leave to the prosecution should not be as a matter of routine, but should be on just and equitable basis, when



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materials reveal that the court below has not appreciated the materials in proper prospective.

7. Grant leave provided for u/s 378(4) is not an empty formality, but has been brought into the statute only to safeguard the interests of the persons accused of a crime, who have since been acquitted, as otherwise, they would be put through the rigours of continuous litigation even after their innocence has been accepted by the trial court.

8. A perusal of the entire records reveals that the respondent alleged that the petitioner, respondent and one Jegadheeshkumar are partners in the business started by them in the year 2017 in the name and style of M/s.S.R.F.Textiles Fab and subsequently, there was a problem in between them and the partnership was dissolved in the year 2018. When the partnership was dissolved, 23 cheques were misplaced, thereby, the respondent made a complaint before the law enforcing agency on 28.08.2018 and the said complaint was marked as Ex.D.1. Apart from that, the respondent issued a paper publication on 22.09.2018 for the misplaced cheques and the same was marked as Ex.D.6 and copy of



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C.S.R. was marked as Ex.D.7 and the stop payment letter was marked as Ex.D.3. However, the allegation as against the respondent is that he borrowed the said loan amount from the petitioner on 21.01.2019, which is much after the C.S.R. and the paper publication, which itself shows that there was no transaction in between them and the earlier cheque, which was in possession of the petitioner was misused by the petitioner, which was properly appreciated by the trial court and dismissed the complaint. Therefore, the finding of the trial court cannot be interfered with.

9. Further, in order to grant leave, a case should be made out, but the present case bristles with infirmities which strikes at the root of the findings recorded. Further, in the case on hand, the petitioner, has not made out of a case, where the findings are so very perverse that there has been miscarriage of justice warranting this Court to grant leave to set right the wrong that has been committed by the court below.

10. No infirmities or other materials are placed which necessitates relook into the findings recorded by the court below and granting leave to appeal would be nothing but a travesty of justice insofar as the respondent



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is concerned, who has been acquitted through a well considered judgement passed by the court below.

11. In the aforesaid circumstances, no case is made out by the petitioner for grant of leave and accordingly, this Criminal Original Petition stands dismissed. Consequently, the Criminal Appeal is rejected at the SR stage itself.

**25.04.2024**

Index : Yes / No  
Speaking order / Non-speaking order  
NCC : Yes / No  
sp

To

1.The Judicial Magistrate/FTC No.II, Erode.



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**M.DHANDAPANI, J.**

sp

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**25.04.2024**